

Richard R. Lemay and Carole O. Lemay

v.

Town of Pembroke

Docket No.: 8122-90-PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 assessments of:

\$157,100 (land \$49,350; buildings \$107,750) on a Smith Ave. property, a .706-acre lot with a duplex; and

\$149,050 (land \$49,950; buildings \$99,100) on a Tina Dr. property, a .647-acre lot with a duplex (the Properties).

For the reasons stated below, the appeal for abatements is granted.

The Taxpayers have the burden of showing the assessments were disproportionately high or unlawful, resulting in the Taxpayers paying an unfair and disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayers carried this burden and proved disproportionality.

The Taxpayers argued the assessments were excessive because:

- (1) the changes in the federal tax laws adversely affected the value of these investment properties;
- (2) investment properties, especially duplexes, declined in value faster than other

residential properties;

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(3) they were higher than the Taxpayers' comparables;

(4) they were set during the market peak;

(5) the Smith Ave. property should have been assessed at \$125,680; and

(6) the Tina Dr. property should have been assessed at \$119,240.

The Taxpayers submitted a packet, which the board reviewed, and the Taxpayers commented on the Town's comparables.

The Town argued the assessments were proper because:

(1) the Keeler letter was only an opinion letter and it was a year after the assessment date;

(2) no duplexes sold after the 1988 revaluation and thus there were no sales to present;

(3) the assessments were proportional to comparables; and

(4) they were consistent with the properties' incomes multiplied by a gross-rent multiplier used during the revaluation.

The Town submitted a packet, which was reviewed by the board.

The board's inspector reviewed the property-assessment card, reviewed the parties' submittals and filed a report with the board (copy enclosed). In this case, the inspector only reviewed the file; he did not perform an on-site inspection. This report concluded only two 2-family homes sold in 1991, and these indicated possible overassessment of comparable duplexes. He also stated that in his experience duplexes had declined faster than the overall market. Note: The inspector's report

is not an appraisal. The board reviews the report and treats the report as it would other evidence, giving it the

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weight it deserves. Thus, the board may accept or reject the inspector's recommendation.

Board's Rulings

Based on the evidence, we find the correct assessments should be \$141,400 on Smith Ave. and \$134,150 on Tina Drive.

There was not much market information available for duplexes, which limited both parties and the board in its analysis. However, the Taxpayers did submit two May 1991 listings and a June 1991 realtor's opinion. Additionally, the Taxpayers submitted a sale on Academy Road on January 31, 1990 for \$135,000. The following information can be gleaned from the Taxpayers' information.

Taxpayers' comparables (listings)

41-7	May 6, 1991	\$119,900	(like Tina)
40-2	May 6, 1991	\$129,900	(like Smith)
Time adjusted	41-7	$\$119,900 \times 1.13 = \$135,500$	
Time adjusted	400-2	$\$129,900 \times 1.13 = \$146,787$	

Note: Time adjustment based on change in equalization ratio.

Comparing Taxpayers' comparables with Taxpayers' assessment

Tina Evaluation	\$147,580	Time-adjusted listing	\$135,500
Smith Evaluation	\$155,550	Time-adjusted listing	\$146,800
Only sale	Academy Road	January 31, 1990	\$135,000

Keeler \$118,000 x 1.14 = \$134,500 (Smith Ave.)

While not sales, the listing information certainly would set the upper limit.

The sale provides market information. The realtor's opinion provides one realtor's value opinion.

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In addition to the Taxpayers' evidence, the board's inspector's report indicated that duplexes apparently were declining in value disproportionately to other property types. The inspector also stated one of the duplex sales indicated 15% overassessment.

Given the information provided by the Taxpayer, the board's inspector and given the board's experience, the board concludes a 10% downward adjustment is reasonable and required here due to the decline in these values. The Taxpayers requested a 20% reduction but insufficient evidence was introduced to support such a large adjustment.

At the hearing, the Town objected to the Taxpayers mentioning the Town's statements concerning adjustments to duplexes. The Town claimed admission of this evidence violated the prehearing conference order. The board overruled the objection because: 1) it was newly discovered evidence that could not have been provided at the prehearing conference; and 2) it was merely confirmatory evidence. Specifically, the Taxpayers have been arguing all along, and argued at the prehearing conference, that duplexes were dropping in value faster than the general market. The statement by the Town concerning adjustments in 1993 was merely cumulative and confirming information about whether duplexes had declined faster

in the market than other properties. The board did not, however, consider these statements in our analysis because they were in fact cumulative.

If the taxes have been paid, the amount paid on the value in excess of \$141,400 on Smith Ave. and \$134,150 on Tina Drive shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Page 5
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Pursuant to RSA 76:16-a (Supp. 1991), RSA 76:17-c II, and board rule TAX 203.05, the Town shall also refund any overpayment for 1991 and 1992. Note: the board understands adjustments were made in 1993, and if this is so, this order shall not be applied to 1993 or subsequent years.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within twenty (20) days of the clerk's date below, not the date this decision is received. RSA 541:3; TAX 201.37. The rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A rehearing motion is granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on the evidence and arguments submitted to the board, the board's decision was erroneous in fact or law. Thus, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule TAX 201.37(e). Filing a rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Richard R. and Carole O. Lemay, Taxpayers; and the Chairman, Selectmen of Pembroke.

Dated: November 17, 1994

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Valerie B. Lanigan, Clerk